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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/925,353	Applicant(s) DIAS ET AL.	
	Examiner KAMAL B. DIVECHA	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Action is in response to communications filed 2/13/08.

Claims 1, 3-8 are pending in this application.

Response to Arguments

Applicant's arguments filed 2/13/08 have been fully considered but they are not persuasive.

In response filed, applicant argues in substance that:

a. The cited references fail to teach or suggest, inter alia, that every server out of said plurality of individual servers is adapted to issue load balancing instructions to said NCS by passing said load balancing instructions directly to said NCS in a NCS-control http header (remarks, pg. 7-8).

In response to argument [a], Examiner respectfully disagrees.

Independent claim 1, in part, recites "...wherein **every server** out of said plurality of individual servers **is adapted** to issue the load balancing instructions and wherein the any server is adapted to issue the load balancing instructions that apply to any of the plurality of individual servers."

In other words, every server of the plurality of servers is adapted, configured, implemented, capable and/or adapted to issue the load balancing instructions.

Dutta discloses, **as an example**:

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One method in accordance with an embodiment of the present invention for dynamically changing a load balancing rule includes sending a packet received at the firewall to the load balancing proxy. The load balancing proxy constructs a load balancing rule X based upon the packet, and loads it at the firewall. The load balancing rule X directs that packets with equivalent characteristics (e.g., similar header parameters) to the packet referred to the load balancing proxy be directed to Server A. After a number of these packets are received and processed by Server A, Server A then becomes congested (heavily loaded), and sends a message to the firewall to either generally reduce the amount of traffic being directed to Server A, or else specifically to redirect the traffic being sent in accordance with load balancing rule X to another server. The load balancing proxy then determines a new rule Y, based in one embodiment upon a determination by the proxy of the server best able to handle the traffic. Rule Y directs the traffic directed by rule X to another server, Server B. Rule Y is then loaded at the firewall, and the traffic formerly directed to Server A is now directed to Server B.

Stated another way, Server A becomes congested and sends a message, i.e. instruction to the firewall to either reduce the amount of traffic directed to server A or to redirect the traffic to another server, e.g. server B.

Logically, if server A is capable of issuing instructions to the firewall, then there is no reason why server B cannot send the same instructions to the firewall when server B becomes congested.

In other words, every server of the plurality of servers, i.e. server A and server B, is capable and/or adapted to issue instructions to the firewall for load balancing the servers.

b. Pavan is in a field of art that is non-analogous to that of Dutta (remarks, pg. 8).

In response to applicant's argument that Pavan is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In this case, Pavan is reasonably pertinent to the problem with which the applicant is/was concerned. That is, Pavan explicitly discloses the flow control directives in order to improve the network congestion.

c. Thus, there is no motivation in the references themselves or in the art for combining the references (remarks, pg. 8).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, one of ordinary skilled in the art would have been motivated because it would have improved network congestion by controlling the flow of traffic.

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d. With respect to claim 5, the references fails to teach or suggest a share directive aimed at enabling a sharing of information from a particular source within all members of said plurality of individual servers and said NCS by depositing an HTTP header in the NCS that is added to all subsequent requests having matching filter that corresponds to the source that are issued from the NCS to any server (remarks, pg. 9).

In response to argument [d], Examiner respectfully disagrees.

Colby discloses the process of sending and receiving the messages aimed at sharing the information from the particular source, i.e. a manager, e.g. col. 4 L1-54 and col. 14 L1-50, which enables sharing of the information in form of the directory which is accessed by all devices and/or members.

e. With respect to claim 6, the cited references fail to teach or suggest a lock directive...**to prevent service** of the resource from being performed by any of the plurality of servers (remarks, pg. 9).

In response to argument [e], Examiner respectfully disagrees.

MPEP 2144 (II) discloses:

The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. See, e.g., In re Kahn, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (motivation question arises in the context of the general problem confronting the inventor rather than the specific problem solved by the

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invention); Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc., 424 F.3d 1293, 1323, 76 USPQ2d 1662, 1685 (Fed. Cir. 2005) (“One of ordinary skill in the art need not see the identical problem addressed in a prior art reference to be motivated to apply its teachings.”); In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) (discussed below); In re Dillon, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991).

In this case, Pavan discloses lock and unlock directive aimed at locking resources and unlocking resources.

Claim Objections

Claim 8 is objected to because of the following informalities:

Claim 8 recites “In a network having a plurality of...and a network control scheduler (NCS) a computer readable medium for...”

It is unclear whether the computer readable medium is associated with NCS or is associated with a network.

Appropriate correction is required.

Also note that, since the specification fails to define and/or suggest the use of the computer readable medium, the medium is strictly interpreted to include computer readable **storage medium** such as hard disk, CD-Rs, RAM, ROM, etc.

Claim Rejections - 35 USC § 112

The 35 USC 112, second paragraph rejections presented in the previous office action is withdrawn due to claim amendments, see remarks, pg. 7.

Claim Rejections - 35 USC § 112

The following is a quotation of the **first paragraph of 35 U.S.C. 112:**

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1 and 3-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Independent claim 1 recites, in part, "...determining whether a filter is needed to limit a scope of application of said directives and in case of a positive determination, including the filter..."

The specification as filed fails to provide a support for the amendatory claimed limitation. In other words, the specification fails to teach, disclose and/or suggest the decision making process of determining whether to include a filter or not.

The specification as filed merely suggests including the filter with a directive, e.g. pg. 7 lines 14 to pg. 8 line 7.

There is simply no disclosure whatsoever of deciding whether to include a filter or not, and upon positive determination, including the filter. The decision making process and including the filter are distinct.

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Dependent claim 6 recites "...to prevent service of the resources from being performed by any of the plurality of individual servers..."

Again, the specification as filed fails to support the amendatory claimed language. That is, the specification fails to teach or disclose "preventing service of resources from being performed by any of the plurality of individual servers..."

The specification as filed merely refers to locking all the resources of a particular application temporarily (Emphasis added), e.g. pg. 9 lines 5-14).

As such, the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 3-5 are rejected for the same reasons as set forth in claim 1 due to their dependency on claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al. (hereinafter Dutta, U. S. Patent No. 6,546,423 B1) in view of Fielding et al. (hereinafter Fielding, RFC 2616).

As per claim 1, Dutta discloses a method for enhancing load controlling of a web site including a plurality of individual servers (fig. 1 item #201, 202) and a network control scheduler (fig. 1 item #203, fig. 2 item #305), said web site using hyper text transport protocol, said method comprising the steps of:

in any one server out of said plurality of individual servers:

issuing load balancing instructions to said NCS (i.e. a firewall or a load balancer), by passing said load balancing instructions to NCS (col. 5 L14-21), including the steps of:

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including directives (i.e. instructions) that must be obeyed by said NCS (col. 5 L14-21, i.e. server A is interpreted as any one server out of server A and B, which sends a message instructing firewall to reduce amount of traffic to server A) and

determining whether a filter is needed to limit a scope of application of said directives and in case of positive determination, including the filter (such as cookie, url, headers as per applicant specification, pg. 7 line 14 to pg. 8 line 7: admitted prior art) (col. 5 L9-30: redirecting traffic in accordance with rule x to another server, rule x is a filter that limits the scope of application of said directive, in this case redirect directive, wherein the firewall decided whether the filter is needed);

receiving said load balancing instructions in said NCS from said any one server (col. 5 L23-30); and

complying with said load balancing instructions upon receipt (col. 5 L18-29, firewall receives the instruction to reduce the amount of traffic or else specifically redirect the traffic to another server from server A, and directs the traffic to another server, i.e. to server B),

wherein every server out of said plurality of individual servers is adapted to issue the load balancing instructions and wherein the any one server is adapted to issue the load balancing instructions (server A of Dutta's system, col. 5 L14-21) that apply to any of the plurality of individual servers (server B of Dutta's system, server B is affected since server A's traffic is now directed to server B based on the instruction or message from server A, wherein message is also applied to server which sent the message to firewall, col. 5 L14-21).

However, Dutta does not disclose the process wherein the load balancing instructions are issued in a NCS-control HTTP header (i.e. http header according to applicant specification, pg. 7 lines 14-20).

Fielding explicitly discloses passing the directives including instructions to the proxy servers in a http headers (section 14.9: directives for instructing servers, section 4.2: message headers, section 4.5: header fields and its extension, 10.3: redirecting code).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Dutta in view of Fielding in order to pass the directives in a http header.

One of ordinary skilled in the art would have been motivated because HTTP is a generic protocol used by the user agents and proxies/gateways and other Internet systems (Fielding: section 1.1, 1.4: goal of http 1.1).

As per claims 7-8, they do not teach or further define over the limitations in claim 1. Therefore claims 7-8 are rejected for the same reasons as set forth in claim 1.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being obvious over Dutta et al. (hereinafter Dutta, U. S. Patent No. 6,546,423 B1) in view of Fielding et al. (hereinafter Fielding, RFC 2616), and further in view of Pavan et al. (hereinafter Pavan, U. S. Patent No. 6,801,943 B1).

As per claim 3, Dutta discloses the process wherein the instructions (directives) include flow-control instructions (directives, Dutta, col. 5 L18-29), however, Dutta does not disclose the directives known as sharing and NCS-queuing (queuing) directives.

Pavan discloses a flow control directive (col. 4 L51-54: read scheduling of packets as flow control mechanism); sharing directives (col. 4 L5-6: scheduler capable of to schedule the use of shared resources); and NCS-queuing directives (col. 4L14-20 and fig. 6 and col. 5 L23-50).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Dutta in view of Pavan, in order to include sharing and queuing directives, since Pavan discloses flow-control directive, sharing directive, and NCS-queuing directive.

One of ordinary skilled in the art would have been motivated because it would have controlled and load balanced the network traffic, managed the queue of packets and improved the network congestion (Dutta, col. 5 L18-29 and Pavan, see abstract, col. 3 L56 to col. 4 L55).

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being obvious over Dutta et al. (hereinafter Dutta, U. S. Patent No. 6,546,423 B1) in view of Fielding et al. (hereinafter Fielding, RFC 2616), in view of Pavan et al. (hereinafter Pavan, U. S. Patent No. 6,801,943 B1) in view of Millard (Pub. No.: 2002/0087282 A1), and further in view of Subramanian et al. (Pub. No.: US 2002/0194211 A1).

As per claim 4, Dutta in view of Pavan discloses the process of decreasing amount of traffic directed to server A (i.e. interpreted as a decrease rate directive to decrease a rate at which requests to said any one server are sent, Dutta col. 5 L18-29), however Dutta and Pavan does not explicitly disclose the process wherein said flow-control directives include an increase-rate directive to require said NCS to increase a rate at which requests to said any one server are sent;

an increase-window directive to require said NCS to increase a number of jobs allowed to be simultaneously processed in said any one server; and a decrease-window directive to require said NCS to decrease a number of jobs allowed to be simultaneously processed in said any one server.

Millard teaches the process of increasing/decreasing rate at which requests are sent to the server (interpreted as increase rate directive, pg. 1-2 block #9, pg. 5 block #42-48). Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Dutta and Pavan, in view of Millard, to include the increase rate directive for increasing the a rate at which requests to any one server are sent, since Millard teaches the process of increasing and decreasing the rate at which requests are sent to the server.

One of ordinary skilled in the art would have been motivated because it would have increased or decreased the stress on the target server or machine (Millard, pg. 1-2 block #9).

However, Millard does not disclose the process wherein flow-control directives include an increase-window directive to require said NCS to increase a number of jobs allowed to be simultaneously processed in said any one server and a decrease-window directive to require said NCS to decrease a number of jobs allowed to be simultaneously processed in any one server.

Subramanian discloses the process of increasing and reducing the number of concurrent requests (read as number of jobs allowed to be processed simultaneously, pg. 11 block #157-159). Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to Dutta, Pavan and Millard, in view of Subramanian, to include the process of increasing or decreasing the number of jobs or requests allowed to be processed

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simultaneously in any one server, since Subramanian teaches the process of increasing or decreasing number of concurrent jobs to be processed by a server.

One of ordinary skilled in the art would have been motivated because it would have avoided overloading or congestion in the system with too many requests (Subramanian, pg. 11 block #159).

5. Claims 5-6 is rejected under 35 U.S.C. 103(a) as being obvious over Dutta et al. (hereinafter Dutta, U. S. Patent No. 6,546,423 B1) in view of Fielding et al. (hereinafter Fielding, RFC 2616), in view of Pavan et al. (hereinafter Pavan, U. S. Patent No. 6,801,943 B1) in view of Millard (Pub. No.: 2002/0087282 A1) in view of Subramanian et al. (Pub. No.: US 2002/0194211 A1) and further in view of Colby et al. (hereinafter Colby, U. S. Patent No. 6,625,643 B1).

As per claim 5, Dutta, Fielding, Pavan and Subramanian discloses complying with the directive by depositing the http headers and/or directives included in the message to the firewall that is added or applied to packets with some equivalent characteristics, i.e. a filter that correspond to source (Dutta, col. 5 L9-29: i.e. loading the rule or directive, Fielding: section 14.9).

However, Dutta, Pavan and Subramanian does not disclose the process aimed at enabling an information sharing within all members of said plurality of individual servers and said NCS (i.e. shared directive) and the process aimed at clearing previous said information sharing (i.e. clear directive).

Colby discloses a broadcast manager, i.e. a particular source, capable of sending and receiving system messages comprising: a share message for enabling information sharing within all members (interpreted as share directive: col. 3 L32-38, col. 4L54-55, col. 8 L37-51; col. 14 L45-50); and a clear message for stopping or canceling the shared information (interpreted as clear directive: col. 15 L15-20; col. 4L43-46; col. 16 L40-44).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Colby as stated above with Dutta, Pavan and Subramanian in order to enable information sharing within all members of plurality of servers and clearing a previous said information sharing.

One of ordinary skilled in the art would have been motivated because it would keep the system (i.e. load balancer and servers) in synchronization (Colby, col. 9 L60-62).

As per claim 6, Dutta does not disclose the process wherein NCS-queuing directives including: a lock directive aimed at locking resources identified by said filter and an unlock directive aimed at releasing previously locked said resources.

Pavan discloses NCS-queuing directives including: a lock directive aimed at locking resources identified by said filter (Pavan, read as HOLD directive, col. 5L18-42, fig. 2 item #38) and an unlock directive aimed at releasing previously locked said resources (Pavan, read as RELEASE directive, col. 5L18-42, fig. 2 item #34).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Dutta in view of Pavan, in order to provide lock directive for locking resources and unlock directive for releasing locked resources, since Pavan teaches hold and Release directive.

One of ordinary skilled in the art would have been motivated because it would have avoided the network congestion by controlling the service requests in a service queued and it would have controlled the behavior of the load-balancer or scheduler and would have ensured that the user-level scheduling requirements are met (Pavan, col. 5 L17-22, col. 6 L7-12).

Additional References

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Evans et al., U. S. Patent No. 6,061,363.
- b. Wolff, U. S. Patent No. 6,886,035 B2: Dynamic Load balancing of a network of client and server computers: teaches the process of issuing load balancing instructions from a clustered node to load balancer.

Conclusion

Attempt was made by the examiner on 5/6/08 to expedite the prosecution and a brief discussion was held regarding the changes to the claims. Applicant's representative agreed to submit the proposed changes by 5/8/08. As of 5/9/08, Examiner has not received the proposed amendments with the suggested changes and/or applicant's authorization to make changes.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is (571)272-5863. The examiner can normally be reached on Increased Flex Work Schedule.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Kamal Divecha
Art Unit 2151
/John Follansbee/
Supervisory Patent Examiner, Art Unit 2151

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	09/925,353	DIAS ET AL.	
	Examiner	Art Unit	
	KAMAL B. DIVECHA	2151	